

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/849,571
Applicants : Weidong Zhu *et al.*
Filed : May 20, 2004
Title : System and Method For Detecting Structural Damage
TC/A.U. : 2863
Examiner : Michael P. Nghiem
Docket No. : 266923-000007USPT
Customer No. : 70001

**PETITION UNDER 37 C.F.R. § 1.78(a)(6) FOR
UNINTENTIONALLY DELAYED CLAIM FOR PRIORITY**

ATTN: MS PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In accordance with § 1.78 (a)(6), Applicants hereby petition to correct the claim to the benefit of priority under 35 U.S.C. §§ 119(e), as is set forth in the attached Amendment, ADS, and Declaration.

Petitioner hereby respectfully petitions the Assistant Commissioner for Patents to accept late amendment to the specification to claim priority to a prior-filed provisional application on the grounds that the delay in making the amendment was unintentional. The events surrounding the unintentional delay in filing the amendment are as follows:

1. On or about December 30, 2008, it was discovered that the Applicant's timely claim for the benefit of U.S. Provisional Patent Application Serial No. 60/471,813, filed May 20, 2003, by the law firm of Fleshner & Kim, LLP, misstated in the filing documents the relevant U.S. Provisional Patent Application Serial No. 60/471,873, filed May 20, 2003, apparently through a clerical error inserting a "1" instead of a "7".
2. On December 30, 2008, the Applicant filed a "Second Supplemental Amendment" presenting an amendment to the specification requesting that the specification be amended to correct the error in naming the provisional application from 60/471,873 (incorrect) to 60/471,813 (correct).
3. On April 24, 2009, the Examiner mailed an Office Action taking the position that, despite the obviousness of the clerical error, the claim for the benefit of the prior filed application under 35 U.S.C. § 119(e) could not be corrected by amendment and that, if Applicants desired to claim the benefit of the prior-filed application no. 60/471,813, the

present petition would have to be filed. The Examiner also stated that, due to the error in the original filing documents, the Declaration was defective and the Examiner stated that a new Declaration was required.

Accordingly, Petitioner submits this petition, as well as the Amendment, ADS, and newly executed Declaration and Power of Attorney, to perfect the claim for priority under 35 U.S.C. § 119(e). The Petitioner requests that the claim for priority, under 35 U.S.C. § 119(e), set forth in the attached Amendment and Declaration and Power of Attorney which accompany this petition be accepted under the unintentional delay provisions of 37 C.F.R. § 1.78(a)(6). The entire delay between the date the claim for priority was due under 37 C.F.R. § 1.78(a)(5)(ii) and the date of filing this Petition and the accompanying Amendment, ADS, and signed Declaration and Power of Attorney was unintentional.

In accordance with the provisions of 37 C.F.R. § 1.78(a)(6), the surcharge fee of \$1410.00, set forth in 37 C.F.R. § 1.17(t), should be charged to Deposit Account No. 50-4181 (269923-000007USPT). Further, any overage or shortage in the required payment, should be credited or applied to such Deposit Account.

Therefore, the Applicants respectfully request that this Petition to accept the delayed claim to priority be granted.

Date: September 25, 2009

/William D. PEGG, Reg. No. 42,988/
William D. Pegg
Reg. No. 42,988
Nixon Peabody LLP
300 South Riverside Plaza, 16th Floor
Chicago, IL 60606
312-425-3900
Attorney for Applicant